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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORIA

RJ FINANCIAL, INC., APPELLANT, v. DAVID SEROR, APPELLEE.	CASE NO.: 2:15-cv-06088-DDP Bankruptcy Court Case No.: 1:10-bk-10209-MT **APPELLANT RJ FINANCIAL, INC.'S MOTION FOR VOLUNTARY DISMISSAL OF THE APPEAL** **[NO ORAL ARGUMENT UNLESS ORDERED BY COURT]**

TO THE HONORABLE DEAN D. PREGERSON, UNITED STATES DISTRICT COURT JUDGE, UNITED STATES TRUSTEE AND APPELLEE CHAPTER 7 TRUSTEE DAVID SEROR:

Appellant RJ Financial, Inc. ("Appellant") hereby moves this Court for a voluntary dismissal of the above-entitled case ("Appeal") and that each party bear shall bear its own attorney's fees, costs, and expenses incurred respecting this Appeal pursuant to Rule 8023 of the Federal Rules of Bankruptcy Procedure ("FRBP"). The Appellant moves for relief on the grounds that the Appeal is moot in light of the vacating of the July 24, 2015 Order by the Honorable Maureen Tighe of the United States Bankruptcy Court for the Central District of California, San Fernando Division, which was the critical issue of this Appeal.

Pursuant to Rule 8013(a)(2)(D)(ii), Appellant is not required to file a notice of motion for its Motion for a Voluntary Dismissal of this Appeal ("Motion"). Unless otherwise ordered by the Court, any party to the Appeal may file a response to this Motion within seven days after service of the Motion. FRBP 8013(a)(3). Unless otherwise ordered by this Court, there will not be oral argument heard on this Motion. FRBP 8013(c).

For the reasons stated herein, the Appellant respectfully requests an Order that grants the following relief:

(1) The Motion be granted;

(2) The Appeal is voluntarily dismissed;

(3) Each party shall bear its own attorney's fees, costs, and expenses incurred; and

(4) For such other relief that may be proper.

DATED: November 19, 2015

CREIM MACIAS KOENIG & FREY LLP

By: ______________________
SANDFORD L. FREY
Attorneys for Appellant RJ Financial, Inc.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCITON

The Appellant seeks an Order from this Court dismissing the Appeal pursuant to Rule 8023 of the FRBP on the grounds that the action by the Bankruptcy Court in vacating an order has mooted this Appeal. In addition, the Appellant respectfully requests that each party bear its own attorney's fees, costs, and expenses incurred.

II.

STATEMENT OF FACTS

A. On July 24, 2015, the Trustee lodged and the Court entered the *Order Regarding the Turnover of Electronic Records* [Docket No. 504] ("July 24 Order").

B. On August 7, 2015, Appellant filed a Notice of Appeal of the Order re Turnover of Electronic Records entered on July 24, 2015 by the United States Bankruptcy Court for the Central District of California.

C. On August 7, 2015, the Appellant filed its Joint Appeal of Reorganized Debtor RJ Financial, Inc. dba Romano Jewelers and Randy Abalkhad to Vacate the Final Order of the United States Bankruptcy Court of the Central District of California Entered on July 24, 2015; or Alternatively, Joint Motion of Debtor and Randy Abalkhad for Leave to File an Appeal of the Interlocutory Order Entered on July 24, 2015. [Docket No. 3].

D. On August 11, 2015, the parties were notified by United States District Court for the Central District of California of its Notice Regarding Appeal from Bankruptcy Court that the appeal had been assigned to the Honorable Dean D. Pregerson of the United States District Court for the Central District with Case Number 2:15-cv-06088-DDP. [Docket No. 1].

E. On August 18, 2015, Appellant requested a transcript of the hearing held on July 23, 2015 before the Honorable Maureen Tighe regarding the Chapter 7 Trustee's Emergency Motion for Issuance of a Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction Enjoining Debtor, Its Principal Randy Abalkhad, and the Debtor's Officers and Agents, and Attorneys from Taking Further Action with Respect to the Debtor's Books and Records: and for

Entry of an Order Compelling the Debtor to (1) Turn Over the Books, Records and Property of the Debtor to the Trustee; and, (2) Cooperate with the Trustee; Declarations of David Seror, Kaily Crum and Robyn Sokol in Support. [Docket No. 536].

F. On or about August 21, 2015, Appellant filed its Designation of the Record and Statement of Issues on Appeal. [Docket No. 548].

G. The Bankruptcy Court held a hearing to consider the issues raised in the *Joint Appeal of Reorganized Debtor RJ Financial, Inc., dba Romano's Jewelers and Randy Abalkhad to Vacate the Final Order of the United States Bankruptcy Court of the Central District of California entered on July 24, 2015; or Alternatively, Joint Motion of Debtor and Randy Abalkhad for Leave to File an Appeal of the Interlocutory Order and to Vacate the Order entered on July 24, 2015* ("Motion re July 24 Order"). The Bankruptcy Court granted the Motion re July 24 Order thereby vacating the July 24 Order.

H. Pursuant to the Motion re July 24 Order, the Bankruptcy Court entered on September 4, 2015, an *Amended Order Regarding the Turnover of Electronic Records* [Docket No. 566] ("Amended July 24 Order").

I. Because the Amended July 24 Order mooted the issues raised by the pending Appeal, the Appellant prepared a Stipulation for Dismissal of the Appeal ("Stipulation") and an Order. On or about September 4, 2015, the Appellant sent a copy of the Stipulation and an Order to Appellee for execution. Under the terms of the Stipulation, each party agreed to bear its own attorney's fees, costs, and expenses incurred. The Appellant has not received an executed Stipulation from the Appellee. Therefore, the Appellant filed this Motion to have the Appeal voluntarily dismissed. [Declaration of Sandford L. Frey].

III.

DISCUSSION

FRBP 8023 Provides for Voluntary Dismissal by the Appellant

Rule 8023 of the FRBP provides:

> ". . . An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP."

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In this case, the critical issue on this Appeal was the entry of the July 24 Order by the Bankruptcy Court. The Bankruptcy Court vacated the July 24 Order and entered an Amended Order on September 4, 2015. Because the July 24 Order has been vacated, the issues on Appeal are moot.

The Appellant sent a Stipulation and Order to the Appellee regarding the dismissal of the Appeal; however, the Appellant never received a copy of the executed Stipulation from the Appellee. Appellant is willing to bear its own costs, fees and expenses incurred in this Appeal. The Appellant is informed and believes that no costs and/or expenses have been incurred by the Appellee because there have been no filings by the Appellee in this Appeal. The Appellant respectfully requests that Court dismiss this Appeal and order that each party shall bear its own attorney's fees, costs, and expenses incurred in this Appeal.

IV.

CONCLUSION

For the reasons stated above, the Appellant respectfully requests that the Motion be granted and this Appeal dismissed with each party bearing its own attorney's fees, costs, and expenses incurred in regard to the Appeal.

DATED: November 19, 2015

CREIM MACIAS KOENIG & FREY LLP

By: ______________________

SANDFORD L. FREY
Attorneys for Appellant RJ Financial, Inc.

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DECLARATION OF SANDFORD L. FREY

I, Sandford L. Frey, declare as follows:

1. I am an attorney at law, duly licensed to practice in the State of California and before this Court. I am partner in the law firm of Creim Macias Koenig & Frey LLP, counsel of record for Appellant RJ Financial, Inc. in the above-entitled Appeal. I submit this Declaration in support of Appellant's Motion to Voluntary Dismiss of the Appeal ("Motion"). Except to those matters on information and belief, I have personal knowledge of the facts set forth below and, if called to testify, I would and could competently testify thereto.

2. On or about September 4, 2015, on behalf of the Appellant, I emailed a copy of the Stipulation and an Order to counsel for Appellee for execution. In the Stipulation, I included language pursuant to Rule 8023 of the FRBP that each party agreed to bear its own attorney's fees, costs, and expenses incurred. I have not been made aware that Appellee has incurred any costs and/or expenses in the Appeal because there have been no filings by the Appellee in this Appeal. The Appellant has not received an executed Stipulation from the Appellee, which necessitated this Motion.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, and that this declaration was executed on November 19, 2015, at Los Angeles, California.

SANDFORD L. FREY